



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

February 6, 1998

Ms. Cathy Cunningham  
Senior Assistant City Attorney  
City of Irving  
P.O. Box 152288  
Irving, Texas 75015-2288

OR98-0370

Dear Ms. Cunningham:

You ask whether certain information is subject to required public disclosure under the Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 112181.

The Irving Arts Center (the "Arts Center"), which your office represents, received a request for a variety of information concerning the Irving Symphony Orchestra (the "ISO"). Specifically, the requestor requests the following information:

- 1) All season support and/or project grant applications for the 97/98 season, along with granting agreements and final evaluation reports for each grant.
- 2) A copy of the ISO's articles of incorporation.
- 3) A current list of ISO Board members and their addresses.
- 4) Statements of ISO financial condition compiled by independent reviewers for the most recent fiscal year, and for three previous years.

In response to the request, you submitted to this office for review a copy of the information, which you assert is responsive. You state that "[t]he city is releasing most of the requested information" to the requestor. However, you contend that the submitted information, items 3 and 4 of the request, is excepted from disclosure under sections 552.101 and 552.110 of the Government Code. We have considered the arguments and exceptions you have raised and reviewed the submitted information.

We first address whether any of the submitted information must be withheld pursuant to section 552.110. Section 552.110 protects the property interests of private parties by excepting from disclosure two types of information: (1) trade secrets, and (2) commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision. Section 552.110 is designed to protect third-party interests that have been recognized by the courts. *See* Open Records Decision No. 319 (1982). Yours is not a situation in which the requestor seeks commercial or financial information that the public body has obtained from a third-party. *See* Open Records Decision Nos. 590 (1991), 568 (1990). The information at issue appears to be maintained by the Arts Center and created "in connection with the transaction of official business." Gov't Code § 552.002. Therefore, we conclude that section 552.110 is not implicated and cannot provide a basis for exception for this open records request.

We next address whether the information must be withheld from the public on privacy grounds. Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including information coming within the common-law right to privacy. *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

This office has stated on many occasions that there is a legitimate public interest in the expenditure of public funds. *See* Open Records Decision Nos. 541 (1990) at 1-2, 520 (1989) at 5, 518 (1989) at 7, 233 (1980) at 2; Gov't Code 552.022(3).<sup>1</sup> After reviewing the submitted records, we did not find any information that was protected by privacy or any provision of law in conjunction with section 552.101. Therefore, the Arts Center cannot withhold any of the requested information under section 552.101.

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<sup>1</sup>Specifically, we note that section 552.022 of the Government Codes, provides in pertinent part:

Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information:

(1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body; (2) the name, sex, ethnicity, salary, title, and dates of employment of each employee and officer of a governmental body; (3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body, if the information is not otherwise made confidential by law; (4) the name of each official and the final record of voting on all proceedings in a governmental body; (5) all working papers, research material, and information used to estimate the need for or expenditure of public funds or taxes by a governmental body, on completion of the estimate; and, (6) the name, place of business, and the name of the municipality to which local sales and use taxes are credited, if any, for the named person, of a person reporting or paying sales and use taxes under Chapter 151, Tax Code[.]

Some of the section 552.022 provisions describe information that must be made available to the public as a matter of due process.

Although you did not raise any other exception to disclosure, we must consider whether some of the requested information must be withheld pursuant to sections 552.024 and 552.117. Section 552.117 of the Government Code excepts from public disclosure information relating to the home address, home telephone number, and social security number of a current or former government employee or official, as well as information revealing whether that employee or official has family members. Section 552.117 requires you to withhold this information for an official, employee, or former employee who requested that this information be kept confidential under section 552.024. *See* Open Records Decision Nos. 622 (1994), 455 (1987). You may not, however, withhold this information if the employee had not made a request for confidentiality under section 552.024 prior to the time this request for the documents was made. Whether a particular piece of information is public must be determined at the time the request for it is made.<sup>2</sup> Open Records Decision No. 530 (1989) at 5. Accordingly, you must redact the information subject to section 552.117 wherever it is located in the submitted records.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have any questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Sam Haddad". The signature is fluid and cursive, with a large initial "S" and a stylized "H".

Sam Haddad  
Assistant Attorney General  
Open Records Division

SH/rho

Ref: ID# 112181

Enclosures: Submitted documents

cc: Mr. Raymond M. Hair, Jr.  
President, Local 72-147, AFM  
1939 Stadium Oaks Court  
Arlington, Texas 76011  
(w/o enclosures)

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<sup>2</sup>We note that section 552.352 of the Open Records Act imposes criminal penalties for the release of confidential information.